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10/797,680	03/09/2004	Thilo Leineweber	10191/3467	4908
26646 7590 11/04/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER KISWANTO, NICHOLAS				
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/797,680
Filing Date: March 09, 2004
Appellant(s): LEINEWEBER ET AL.

Michelle M Carniaux
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/30/2009 appealing from the Office action mailed 2/2/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Asada et al (US 6,434,471).
- o In regard to claim 1, a device for controlling a speed of a motor vehicle in terms of one of a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the device comprising:
 - o An arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap (Column 5, line 40 - Column 6, line 4)
 - o An arrangement for changing longitudinal dynamics of the speed control when the time gap changes (Column 5, line 40 - Column 6, line 4)
 - o An arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the

vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap (Column 5, line 40 - Column 6, line 4)

- An arrangement for first activating, given a decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle (Column 5, line 40 - Column 6, line 4)
- In regard to claim 2, wherein a change in the time gap allows different driving programs to be selected. (Column 5, line 40 - Column 6, line 4)
- In regard to claim 5, a method for controlling a speed of a motor vehicle in terms of one of a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the method comprising:
 - Setting a distance to a preceding vehicle by a drive of the vehicle in the form of a time gap (Column 5, line 40 - Column 6, line 4)
 - Changing longitudinal dynamics of the speed control when the time gap changes (Column 5, line 40 - Column 6, line 4)
 - An arrangement for increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap (Column 5, line 40 - Column 6, line 4)

- An arrangement for first activating, given a decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle (Column 5, line 40 - Column 6, line 4)

Response to Arguments

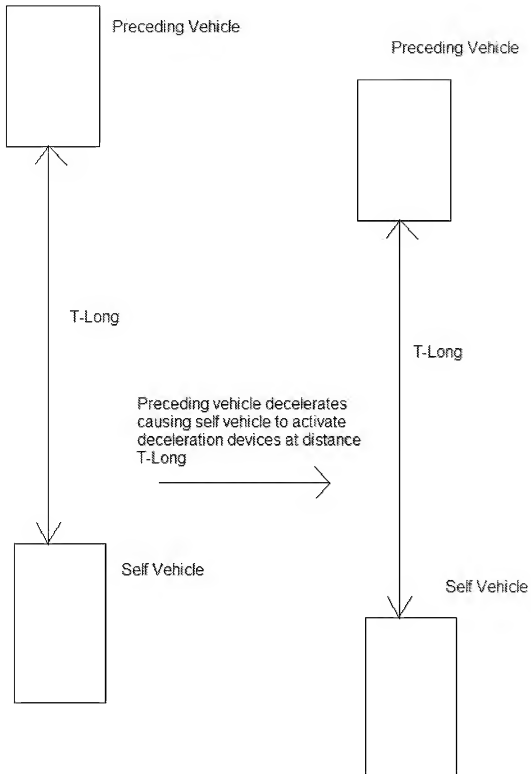
3. Appellant's arguments filed 10/9/2008 have been fully considered but they are not persuasive. Appellant points to a predetermined maximum acceleration as lack of disclosure of increasing a maximum possible vehicle acceleration. However, said passage cited by Appellant merely indicates the maximum acceleration or deceleration possible under the most extreme of conditions. In the sentence immediately preceding Appellant cited passage, Asada clearly teaches increasing a maximum possible acceleration given a decrease in the time gap and further, activating deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

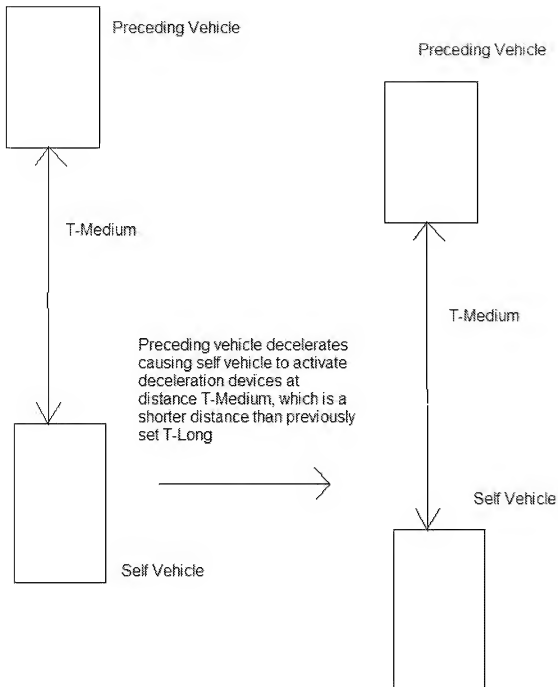
(10) Response to Argument

As to Appellant's Arguments that Asada does not disclose *increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a minimum possible vehicle deceleration implementable by a speed control system*, the term "maximum possible acceleration/deceleration" is boundless since it does not specify a rate of acceleration/deceleration, and further, by definition would be static if it truly were the maximum possible. Thus, the mere fact that Asada teaches adjusting acceleration/deceleration reads upon Appellant's claim. Appellant suggests that because

Asada discloses an acceleration limit of 0.06G that it fails to read upon Appellant's claim, however as shown above, the term "maximum possible acceleration/deceleration" is ambiguous, and the fact that Asada does teach increasing a possible acceleration/deceleration reads on Appellant's claim.

As to Appellant's Arguments that Asada does not disclose *first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle*, it would follow naturally that if the time gap were decreased, any activation of deceleration devices would occur at a shorter distance from the preceding vehicle since a decrease of the time gap results in a shorter following distance from the preceding vehicle. Take for example, a self vehicle following a preceding vehicle at the long time gap setting, meaning a long distance between the two vehicles (T-Long). If the preceding vehicle decelerates, the self vehicle must activate deceleration devices to maintain the long time gap setting. This activation of deceleration devices occurs at a distance T-Long since that was the distance at which the self vehicle was following the preceding vehicle. Now, let's say the driver uses the time gap setting arrangement to set a decrease in the time gap. This means the distance between the two vehicles are now closer than the previous distance, let's call this new distance T-Medium. Now when the preceding vehicle decelerates, the deceleration devices on the self vehicle activates at a distance T-Medium since that is now the distance at which the self vehicle is following the preceding vehicle. The illustrations below serve to further clarify.





(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Nicholas Kiswanto/

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Khoi Tran /KT/

SPE Art Unit 3664

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